

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(MKB)(JAM)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(MKB)(JAM)
	:	
	:	RULE 23(b)(3) CLASS COUNSEL’S
This Document Relates To:	:	MONTHLY REPORT REGARDING THIRD-
	:	PARTY ENTITIES
ALL ACTIONS.	:	
	:	
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I. INTRODUCTION

This is the sixth monthly report regarding third-party claims filers following the Court's request.

As Rule 23(b)(3) Class Counsel ("Class Counsel") reported previously, with the claims process ramping up, there has been a noticeable increase in class member calls. Since the last report, the numbers have increased. This month there were 19 new communications received by Epiq and several communications received by Class Counsel. Calls received via the toll-free number are tracked and reported to Class Counsel from Epiq. Class Counsel also directly receives calls and emails regarding third parties that are followed up on immediately. Additionally, Class Counsel regularly searches online using various keywords in an attempt to monitor what is a fluid situation.

In this report, Class Counsel describes current issues related to third parties.

II. UPDATES REGARDING THIRD-PARTY ISSUES

In previous monthly reports, Class Counsel informed the Court that it was in discussions with a law firm that received both: (1) an attorney fee for its work performed on behalf of the class; and (2) is offering fee-based claims-filing services for members of the merchant class. Class Counsel and the law firm have reached an agreement in principle to resolve Class Counsel's concerns, whereby the law firm will amend its disclosures to include the fact that it received a fee as one of class counsel and, for merchants it has already enlisted as third-party filing clients, proactively inform them of this fact, offering them a 30-day window in which to terminate their agreement with no recourse. Language to be used in the notice has been agreed upon and class members will be receiving notice in the coming days. Class Counsel believes this agreement should put this matter to rest and will continue to monitor the situation and alert the Court should any additional issues arise.

III. NEW ISSUES

A. Conflict Notices

As part of the claims process, on March 8, 2024, Epiq began sending conflict notices where more than one registrant has registered to file claims for the same Tax Identification Number

(“TIN”)/Legal Entity. This conflict most often occurs when a third-party claims-filing company and a merchant have both registered to file claims for the same TIN. The conflict notices provide contact information for the other registrant in conflict and requests that the parties resolve the conflict amongst themselves (where possible) and alert Epiq as to how it is to be resolved. In many instances, Epiq has received responses from merchants expressing confusion and annoyance upon learning about a prior agreement with a third-party filer that they do not remember or recognize. Class Counsel and Epiq are contacting these merchants on an ongoing basis to try to assist them either in efforts to cancel the contract or otherwise working with them and the third party to resolve these cases.¹

B. Additional Matters

Class Counsel receives near daily emails and calls from both class members with questions regarding third parties as well as from third-party claims-filing company representatives with questions regarding the claims process. Additionally, Class Counsel conducts searches to determine whether various third parties are complying with the Court’s orders.

In the past month, Class Counsel has been able to have corrections made to solicitations from a few third parties that failed to include the required disclaimer language. Conference calls were held and new, updated language was shared with Class Counsel. Most recently, this week, a brochure and website regarding a third-party filer was found to be missing certain disclaimers. Class Counsel immediately reached out to the company. The company corrected its brochures and website within the day.

At this time, there are no disputes that require the Court’s intervention.

IV. OUTREACH TO THIRD PARTIES BY EPIQ

As Class Counsel previously reported, since August 18, 2023, Epiq has been performing specific outreach efforts to known third-party claims filers. As of March 14, 2024, Epiq has been in

¹ Other conflict notices have also issued, including conflicts between third-party filing companies and claim-buying entities as well as conflicts between claim-buying entities and merchants.

communication with 178 third-party claims filers, law firms, and non-traditional bulk filers following the outreach that took place on August 18, 2023. Of those 178 third parties, Epiq has received client lists from 59 third-party claims filers which claim representation of 203,934 TINs. These client lists also include multiple rows for a single TIN, and multiple rows that lack TINs or have invalid TINs (alphabetic characters, too few or too many digits). Of those 59 third-party claims filers, Epiq has received 143,384 documents from 56 third-party claims filers. Several third-party claims filers have combined their documentation into a single .pdf that covers multiple clients, so the true number is likely higher than the current document count can substantiate. Work continues, including the development of processes to efficiently handle the expected increase in third-party claims.

V. CONCLUSION

Class Counsel will continue to apprise the Court regarding issues with third-party claims filers via monthly reports and will bring urgent matters to the Court's attention via letter or other means should the Court wish a different method to be used. The next monthly report will be filed on April 26, 2024.

DATED: March 22, 2024

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